

Green Tier Advisory Committee Notes from Second Meeting

August 24, 2000

1:00 PM to 4:00 PM

The Lowell Center

1. Welcome and Agenda Review

Peter Wise, the meeting facilitator from Kestrel Management Services, opened the meeting by welcoming committee members and meeting observers.

Secretary Meyer thanked committee members for their attendance, noted the excellent progress being made, set the direction for the day's meeting and reminded members that their work product will guide the Department in drafting Green Tier legislation for Governor Thompson. He also introduced Marilou Martin from U.S. EPA-Region V and Lee Paddock, a consultant representing EPA's Office of Policy and Reinvention.

Jon Heinrich, acting Director, Bureau of Cooperative Environmental Assistance, introduced a delegation from the Philippines. The delegation is investigating regulatory flexibility programs including Wisconsin's Environmental Cooperative Agreement pilots.

At Peter's request, committee members and meeting observers introduced themselves.

The meeting agenda (http://www.dnr.state.wi.us/org/caer/cea/green_tier/agendas/aug24.htm) was reviewed.

2. Meeting One Notes Comments

Peter asked for comments on notes

(http://www.dnr.state.wi.us/org/caer/cea/green_tier/meetings/july20.htm) that were prepared on the committee's first meeting. No comments were made.

3. Example Section Concepts Discussion

Peter introduced three concept papers for which he would seek committee validation and feedback. The first paper, "Purpose and Intent"

(http://www.dnr.state.wi.us/org/caer/cea/green_tier/concept/purpose.htm), was prepared from Secretary Meyer's "A Green Tier for Greater Environmental Protection"

(http://www.dnr.state.wi.us/org/caer/cea/green_tier/speeches/speech2.htm), the Arizona legislation

(<http://www.azleg.state.az.us/legtext/44leg/2r/bills/sb1321c.pdf>) and committee comments from the first meeting. The second and third papers, "Incentives"

(http://www.dnr.state.wi.us/org/caer/cea/green_tier/concept/incentives.htm) and "Trust"

(http://www.dnr.state.wi.us/org/caer/cea/green_tier/concept/trust.htm), represent the Department's paraphrasing of committee comments from the first meeting.

Purpose and Intent

The committee provided the following comments when asked what they liked and disliked about the concept paper, "Purpose and Intent."

- Add "with a baseline of existing regulations" to paragraph "C" to prevent backsliding.
- Paragraph "A" should address improvement of local and regional ambient environments as well as the State's.
- Even as a statement of legislative intent, the purpose and intent concept paper may be too general.
- Add the concept of removing disincentives to paragraph "B."
- Add "economics and quality of life" to the end of paragraph "A."
- Don't make improvements achieved by Green Tier participants mandatory for those that choose not to participate in Green Tier.
- Concepts such as flexibility and streamlining should not be limited to Green Tier; they should be applied generally. Stop nonproductive activities.
- The change sought by Green Tier should be on a large scale, strategic in nature and not just incremental. Look at the big picture.
- Transaction costs must be kept as low as possible or it will be a barrier to participation in Green Tier.
- Does not remember discussing the concepts of paragraph "D" at last meeting.
- Paragraph "D" is appropriate since it promotes environmental stewardship.
- Is paragraph "D" necessary since paragraph "A" takes us beyond compliance?
- If Green Tier contracts/agreements represent defacto regulation for unregulated aspects, it is important that real problems are addressed.
- Paragraph "B" raises questions on assistance and flexibility. What kind of assistance? Financial? Regulatory? Will there be flexibility with respect to federal regulations? Will EPA be a barrier?
- Purpose and intent should be more general to prevent narrowing of possibilities.
- "Grounded in mutual trust" should be added to paragraph "A" in reference to the performance system.

- The purpose and intent should include a stewardship track as well as a performance track. An example is a conservation plan for the Karner Blue Butterfly in which incidental taking is allowed in exchange for habitat protection.
- What is the DNR's jurisdiction with respect to safety as used in paragraph "A"?
- Paragraph "E" looks good, but what is meant by "create a learning system"?
- Public communication is important:
 - For example, the third bullet of paragraph "E" should include the reporting of ambient environmental data.
 - The fourth bullet should include reporting on the progress being made.
- The Green Tier system should apply to all state agencies.
- The transfer of pollution or burden from one region to another or from one population to another should not be allowed.
- Expand the second bullet of paragraph "E" to include doing the necessary more efficiently and eliminating the unnecessary altogether.
- The system should be effective as well as efficient.
- Add "inherently interdependent" to paragraph "C."
- Add a new bullet to paragraph "E" that states, "Provides for sustained business success."
- New bullets should be added to paragraph "E" that:
 - Addresses a comprehensive reduction in pollution; and
 - Promotes technical transfer.
- With respect to the third bullet of paragraph "E," do not substitute one system of reporting for another. It is a barrier.
- Set high goals for Green Tier. Make this a "world-class" system. Be radical. Follow the Wisconsin Idea.
- Emphasize developing technologies.

Meeting observers provided the following comments when asked what they liked and disliked about the concept paper, "Purpose and Intent."

- Add "resource conservation, environmentally effective improvements and other opportunities" to paragraph "D."

- Add stewardship and support for addressing unregulated environmental problems.

Incentives

Peter asked the committee to validate the incentives listed in the concept paper and suggest additions. He also posed three questions to the committee:

Is there value in additional tiers such as U.S. EPA's Achievement Track and Stewardship Track?

Should there be a fixed menu of incentives, individual negotiations or both?

Should there be different incentives for addressing regulated environmental aspects versus unregulated aspects?

The committee provided the following thoughts and comments:

- What is the relationship of our system with EPA's? Can Green Tier agreements supersede federal law? (Peter stated that Green Tier would not alleviate compliance with EPA statutes.)
- There must be sector/company flexibility with respect to selecting incentives.
- If multiple tiers are offered, another hierarchy of regulatory programs should not be created.
- Industrial revenue bonds program could provide a financial incentive.
- A possible incentive is facilitation by Secretary Meyer to overcome local, state and federal barriers.
- Incentives for small businesses and farms should be made available.
- Have a number of operational concerns:
 - How will the incentives be funded?
 - How can the DNR negotiate insurance costs?
 - The DNR must be accountable for expedient and precise implementation of Green Tier agreements. A fixed schedule for the agency to complete an agreement would be an incentive for participation.
- There is merit to more than one tier with one tier being more obtainable.
- A template for agreements/contracts would be helpful, but individual negotiations should still be allowed.

- Recognition that results in increased stature and converts to financial gain would be an incentive. Such a “good housekeeping seal of approval” entitles claims to insurers and lenders.
- Prefer both a fixed incentive menu and individual negotiations.
- Yes to multiple tiers. The entry-level tier could be achieved as recognition for past performance. Incentives should fit movement to a higher tier or tiers. Enforcement discretion must be clearly earned.
- A participant should earn an incentive prior to receiving it.
- Object to limiting liability from third parties. This would be a deal killer for environmental groups.
- Look seriously at multiple tiers. A good example is Oregon’s Custom Waiver Permit.
- Last bullet under “Financial” should be under “Regulatory.”
- How does the last “Regulatory” incentive fit in?
- Start with multiple tiers.
- Have industry prioritize incentives and focus on those incentives with the highest priority. For example, public recognition and fewer inspections have low priority for us.
- Question whether DNR has the resources to expedite permitting.
- Prefer both a fixed menu and flexible incentives/tier negotiations.
- A possible incentive for the power industry would be standard cost/rate recovery assurance for utility investment.
- Another possible incentive would be making new facility siting less difficult.
- Multiple tier concept good but do not add bureaucracy to implement.
- Do not exclude small businesses by the selection of incentives in the Green Tier legislation.
- Multiple tiers too difficult to implement. Offer only one tier with many options.
- Look to the cooperative environmental agreement program for the following lessons.
 - The bar is too high for small businesses. They should not be required to make a home run each time at bat.
 - Provide a specific list of incentives plus a catchall.

Air construction permits are too explicit. This is a barrier.

Meeting observers provided the following thoughts and comments:

- Prefer a fixed menu and individual negotiations rather than multiple tiers. The fixed menu should be self-implementing to lower transaction costs.

Trust

Peter asked the committee to validate the “Trust” list and posed the following questions:

What should be included in completing an agreement?

How do we evaluate agreements – the system?

The committee provided the following thoughts and comments:

- Credit should be given for past gains.
- Referring to the second item, the term “strong” should be replaced with “clear and challenging.”
- Will there be “punishment” for not meeting goals of an agreement? (Peter explained that the participant may be let back to the Control Tier or penalties could be included in the agreement.)
- A requirement for an annual report on accomplishments should be made part of each agreement/contract.
- Incentives should not be placed before trust. We need to think and move outside of the box, but it requires trust.
- The incentives should not be too restrictive since local specificity may be necessary.
- Trust is not just a one-way street. How can the system help increase industry’s trusts of NGO’s?
- With respect to the fifth point, the term “community” must be defined. There may be competing factions within a community. How do you bring all factions to the table?
- Third-party participation must be on a cooperative basis.
- What is the symmetry of agreement? There must be joint obligation.
- Can a third party get you for not making the original goal? What is actionable? If the regulatory baseline is 10 and the agreement is for a reduction to 5 is achieving only 7 actionable?

- The consequence for achieving a reduction to 7 when the agreement is for a reduction to 5 can be made part of the statute.
- Benchmarking is an important part of trust. Compare reductions amongst companies/sectors. The starting point must be clear. Credit must be provided for past efforts.
- Definitions are needed:
 - What is “beyond compliance”?
 - How broad is the agreement, facility-wide, company-wide, outside of state, all media?
 - What is the third-party involvement in the contract? For example, can the Sierra Club deliver CBE if the former participates in the agreement? How can we guarantee integrity of agreement?
- NGO’s have the right to participate since their employee, the government, is participating. No one has the right to exclude or preempt NGO’s from legal action.
- Need transparency of government involvement.
- If there is going to be an agreement, NGO’s must take part in setting the goals of the agreement. No position on being a party to the agreement.
- Must achieve a balance. Achievement level must not be so high that it scares companies away, but must be high enough to result in environmental improvement beyond compliance.
- There must be meaningful public involvement and must include the basic involvement in the agreement.
- There is a difference between a contract standard and a goal.
- If the goal is performance beyond compliance, what are we willing to allow government to give to industries?
- NGO’s need ongoing involvement to assure them that improvements are occurring.
- Do NGO’s want to be able to seek legal action when a party fails to meet the performance goals of the agreement/contract, but remains in compliance with standards?
- Do not see how Green Tier is solving the problem of issuing needed permits in a timely manner. There is too much uncertainty here.

4. Issues Agenda

Committee members selected “Scope/Criteria for Participation” for further discussion. Committee comments included:

- Unless new funding is provided, the agency’s ability to participate is limited. (Peter suggests that a cap based on available funding could be placed on participation.)
- A certified EMS that is certified by a third party should be required for participation.
- How will the criteria relate to ISO 14000 and other EMS’s?
- An EMS is necessary, but the EMS should not necessarily be ISO 14001.
- Facility-wide minimum for participation.
- Consider past performance. Must be in compliance.
- Priority could be given to agreements that provide the greatest environmental improvement.
- Rather than facility-wide, there is more opportunity for improvement within geographic zones (within ten miles for example).
- What are the geographic limitations for community involvement?
- Make sure the bar is not so high that it excludes too many. Requiring an EMS with third-party certification sets the bar too high.
- Priority must be established to help define participation.
- Allow coverage of all media, any size business, the defining of issues on a local basis, self-auditing EMS’s, and corrective action component.
- Nothing more than the pure elements of an EMS should be required. Need flexibility.
- Incentives should be awarded after the goal is achieved.
- Do not require ISO 14000, but have an EMS of certain caliber.
- Do not define scope too tightly to prevent limiting the project.
- We need to ask if environmental performance beyond compliance cannot happen without a Green Tier system.
- Look to Cooperative Environmental Agreements for eligibility criteria.
- If everyone can qualify, does recognition have value?
- DNR must buy in before company will make effort.

- Look to Oregon's costume permit.
- Is staffing adequate and of the right attitude to implement Green Tier? Look at the labor relations training program for a good example of attitude adjustment.
- The larger the pool of participants the better. It would be great if everyone has seal of approval.
- Make it easy to get in, but must reach next goal in a fixed amount of time to remain in the program.
- Allow companies to self nominate. A group of judges, gathered from a broad spectrum (e.g., government, NGO's, academia), would award incentives, probably in tiers.
- NGO's will require technical assistance to participate knowledgeably in agreements/contracts.
- Suggest two tiers, the first a seal of recognition and the second individually negotiated contracts.
- Get as many companies going beyond compliance as possible while addressing the best actors individually.

Comments from meeting observers:

- There may be situations so compelling that you seek out participants to solve a problem and may have to let parties with non-compliance to participate because they represent a needed part of the solution.
- Look to the Bavarian Pact to see examples of participation criteria.

5. Agenda for third Meeting

Peter invited e-mail comments on the three concept papers and on the criteria for participation.

Next meeting tentatively set for September 21st.